



Billing Code 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2012-0035]

16 CFR Part 1500

Revocation of Certain Requirements Pertaining to Caps Intended for Use with Toy

Guns and Toy Guns Not Intended for Use with Caps

AGENCY: Consumer Product Safety Commission.

ACTION: Final Rule.

SUMMARY: Section 106 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) deemed the provisions of ASTM International Standard F963, “Standard Consumer Safety Specifications for Toy Safety” (ASTM F963), to be consumer product safety standards issued by the U.S. Consumer Product Safety Commission (CPSC, Commission, or we). Among other things, ASTM F963 contains provisions regarding sound-producing toys. Existing CPSC regulations pertaining to caps intended for use with toy guns refer to obsolete equipment, but the ASTM F963 provisions for sound-producing toys allow the use of a broader array of more precise and more readily available test equipment for sound measurement. In addition, the ASTM standard requires fewer measurements and permits use of more automated equipment that would increase the efficiency of testing. Because the existing regulations are obsolete and have been superseded by the requirements of ASTM F963, the final rule revokes the existing regulations pertaining to caps intended for use with toy guns and toy guns not intended for use with caps. The final rule is unchanged from the rule as proposed in the notice of proposed rulemaking (NPR).

DATES: The rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

A. Revocation of Certain Regulations Pertaining to Toy Caps and Toy Guns Not Intended for Use with Caps

On June 25, 2012, the Commission published in the *Federal Register* an NPR to revoke certain regulations pertaining to toy caps and toy guns not intended for use with caps. 77 FR 77834. The comment period for the NPR closed on August 24, 2012. The Commission received no comments on the NPR.

The regulations pertaining to caps intended for use with toys guns in 16 C.F.R. §§ 1500.18(a)(5), 1500.47, and 1500.86(a)(6) were originally promulgated by the U.S. Food and Drug Administration (FDA). In September 1973, the Federal Hazardous Substances Act (FHSA) and the statute's implementing regulations were transferred from the FDA to the CPSC. *See* 38 FR 27012 (September 27, 1973). One of the regulations transferred to CPSC included a ban on caps intended for use with toy guns and toy guns not intended for use with caps "if such caps when so used or such toy guns produce impulse-type sound at a peak pressure level at or above 138 decibels" *See* 16 CFR 1500.18(a)(5). Another regulation transferred from FDA to CPSC, 16 CFR 1500.86(a)(6), exempts toy caps that produce peak sound levels of 138 to 158 decibels if: the packaging material

contains a warning regarding proper use, the manufacturer notifies CPSC, and the manufacturer participates in a program to develop toy caps that produce peak pressure levels below 138 decibels. Manufacturers participating in this program are required to provide a status report to CPSC on their progress every three months. We are revoking this exemption because there are currently no manufacturers participating in this program.

Additionally, a third transferred regulation, 16 CFR 1500.47, provides the test method for determining the sound pressure level produced by toy caps and toy guns. The method specifies the use of certain equipment, such as a microphone, preamplifier, and two types of oscilloscopes with specific response and calibration ranges. This regulation also addresses the manner in which peak sound pressure levels are measured.

Section 106 of the CPSIA mandated that the provisions of ASTM International Standard F963, “Standard Consumer Safety Specification for Toy Safety,” be considered consumer product safety standards issued by the Commission under section 9 of the Consumer Product Safety Act (CPSA). References to ASTM F963 in this *Federal Register* notice are to version ASTM F963-11, which became effective on June 12, 2012. Section 4.5 of ASTM F963 establishes requirements for “sound-producing toys,” and section 8.19 of ASTM F963 establishes “Tests for Toys Which Produce Noise.” In general, the ASTM F963 requirements for sound-producing toys are more stringent than 16 CFR 1500.18(a)(5) and 1500.47. For example, section 4.5.1.5 of ASTM F963 states that the peak sound pressure level of impulsive sounds produced by a toy using percussion caps or other explosive action “shall not exceed 125” decibels at 25 centimeters, whereas, 16 CFR 1500.18(a)(5) imposes a ban at or above 138 decibels at 25

centimeters. As another example, section 8.19.2.4 of ASTM F963 specifies a weighted scale based on human hearing damage from the type of impulse noise being generated by the toy, whereas, 16 CFR 1500.47 specifies an unweighted scale for measuring pressure level generated by impulse-type sound. Additionally, the ASTM F963 test method specifies the use of modern equipment (microphones meeting a particular specification), whereas, 16 CFR 1500.47 specifies the use of a microphone, a preamplifier (if required), and an oscilloscope. The equipment specifications in 16 CFR 1500.47 have never been updated.

Therefore, because section 106 of the CPSIA mandates the provisions of ASTM F963 to be consumer product safety standards, and because we believe that the provisions of ASTM F963, with respect to caps intended for use with toy guns, are more stringent than 16 CFR 1500.18(a)(5), the final rule revokes 16 CFR 1500.18(a)(5). Similarly, because ASTM F963 establishes a test method for toys that produce sound, and because our existing regulation refers to obsolete or unnecessary test equipment, the final rule revokes 16 CFR 1500.47. Finally, because the final rule revokes 16 CFR 1500.18(a)(5), we are also revoking the exemptions from the requirements of 16 CFR 1500.18(a)(5) contained in 16 CFR 1500.86(a)(6). The final rule is unchanged from the NPR.

B. Paperwork Reduction Act

The final rule does not impose any information collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

C. Regulatory Flexibility Act

The Commission certified under the Regulatory Flexibility Act (5 U.S.C. 601–612) that the proposed rule would not have a significant economic impact on a substantial number of small entities because the rule would revoke outdated regulatory requirements. We have received no information to change that certification.

D. Environmental Considerations

This rule falls within the scope of the Commission’s environmental review regulation at 16 CFR 1021.5(c)(1), which provides a categorical exclusion from any requirement for the agency to prepare an environmental assessment or an environmental impact statement for rules that revoke product safety standards.

E. Executive Order 12988

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. The preemptive effect of regulations such as this final rule is stated in section 18 of the FHSA. 15 U.S.C. 1261n.

F. Effective Date

The Commission proposed that the rule revoking 16 CFR 1500.18(a)(5), 1500.47, and 1500.86(a)(6) become effective 30 days after publication of the final rule in the *Federal Register*. We received no comments on the effective date. Therefore, the final rule will become effective 30 days after publication in the *Federal Register*.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Reporting and recordkeeping requirements, Toys.

For the reasons stated in the preamble, and under the authority of 15 U.S.C. 1261–1262 and 5 U.S.C. 553, the Consumer Product Safety Commission amends 16 CFR part 1500 as follows:

PART 1500--HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION
AND ENFORCEMENT REGULATIONS

1. The authority citation for 16 CFR part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

§ 1500.18 [Amended]

2. Section 1500.18 is amended by removing and reserving paragraph (a)(5).

§ 1500.47 [Removed]

3. Section 1500.47 is removed.

§ 1500.86 [Amended]

4. Section 1500.86 is amended by removing and reserving paragraph (a)(6).

Dated: November 1, 2013.

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety
Commission.

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